

RECORD OF ORDINANCES

Ordinance No. 2023-77

Passed NOVEMBER 1, 2023

SPONSOR: FINANCE COMMITTEE

AN ORDINANCE AMENDING CHAPTER 37 OF THE CODIFIED ORDINANCES OF THE VILLAGE OF MOGADORE, ENTITLED "MUNICIPAL INCOME TAX" TO ADOPT UPDATES TO CONFORM TO OHIO HOUSE BILL 33, AND DECLARING AN EMERGENCY.

WHEREAS, the Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, provides that "Municipalities shall have authority to exercise all powers of local self-government," and the municipal taxing power is one of such powers of local self-government delegated by the people of the State to the people of municipalities; and

WHEREAS, Article XIII, Section 6 of the Ohio Constitution provides that the General Assembly may restrict a municipality's power of taxation to the extent necessary to prevent abuse of such power, and Article XVIII, Section 13 of the Ohio Constitution states that "laws may be passed to limit the powers of municipalities to levy taxes and incur debts for local purposes;" and

WHEREAS, Amended Substitute House Bill 33, the state of Ohio's biennial operating budget bill for 2024-2025, which was passed by the General Assembly on June 30, 2023, and signed into law by Governor Mike DeWine on July 3, 2023, contains several changes to the Ohio municipal income tax which need to be adopted by municipalities as amendments to their existing income tax ordinances.

WHEREAS, it is necessary and in the best interest of the Village to adopt the revisions Chapter 37 of the Codified Ordinances of the Village of Mogadore, entitled, "Municipal Income Tax," as set forth herein.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Mogadore, Counties of Summit and Portage, State of Ohio, that:

SECTION 1: Chapter 37 of the Code of Ordinances of the Village of Mogadore, entitled "Municipal Income Tax" is hereby amended only as to the provisions set forth below, as follows:

**"§ 37.062 NET PROFIT; INCOME SUBJECT TO NET PROFIT TAX; ALTERNATIVE APPORTIONMENT.**

This section applies to any taxpayer engaged in a business or profession in the municipality unless the taxpayer is an individual who resides in the municipality or the

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

taxpayer is an electric company, combined company, or telephone company that is subject to and required to file reports under R.C. Chapter 5745.

(A) **Except as otherwise provided in divisions (B)(1) and (I) of this section, n**Net profit from a business or profession conducted both within and without the boundaries of the municipality shall be considered as having a taxable situs in the municipality for purposes of municipal income taxation in the same proportion as the average ratio of the following:

(1) The average original cost of the real property and tangible personal property owned or used by the taxpayer in the business or profession in the municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, tangible personal or real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight;

(2) Wages, salaries, and other compensation paid during the taxable period to individuals employed in the business or profession for services performed in the municipality to wages, salaries, and other compensation paid during the same period to individuals employed in the business or profession, wherever the individual's services are performed, excluding compensation from which taxes are not required to be withheld under § 37.052.

(3) Total gross receipts of the business or profession from sales and rentals made and services performed during the taxable period in the municipality to total gross receipts of the business or profession during the same period from sales, rentals, and services, wherever made or performed.

(B) (1) If the apportionment factors described in division (A) of this section do not fairly represent the extent of a taxpayer's business activity in the municipality, the taxpayer may request, or the Tax Administrator of the municipality may require, that the taxpayer use, with respect to all or any portion of the income of the taxpayer, an alternative apportionment method involving one or more of the following:

(a) Separate accounting;

RECORD OF ORDINANCES

Ordinance No. 2023 - 77

Passed NOVEMBER 1, 2023

- (b) The exclusion of one or more of the factors;
    - (c) The inclusion of one or more additional factors that would provide for a more fair apportionment of the income of the taxpayer to the municipality;
    - (d) A modification of one or more of the factors.
  - (2) A taxpayer request to use an alternative apportionment method shall be in writing and shall accompany a tax return, timely filed appeal of an assessment, or timely filed amended tax return. The taxpayer may use the requested alternative method unless the Tax Administrator denies the request in an assessment issued within the period prescribed by § 37.19(A).
  - (3) A Tax Administrator may require a taxpayer to use an alternative apportionment method as described in division (B)(1) of this section only by issuing an assessment to the taxpayer within the period prescribed by § 37.19(A).
  - (4) Nothing in division (B) of this section nullifies or otherwise affects any alternative apportionment arrangement approved by a Tax Administrator or otherwise agreed upon by both the Tax Administrator and taxpayer before January 1, 2016.
- (C) As used in division (A)(2) of this section, "wages, salaries, and other compensation" includes only wages, salaries, or other compensation paid to an employee for services performed at any of the following locations:
- (1) A location that is owned, controlled, or used by, rented to, or under the possession of one of the following:
    - (a) The employer;
    - (b) A vendor, customer, client, or patient of the employer, or a related member of such a vendor, customer, client, or patient;
    - (c) A vendor, customer, client, or patient of a person described in division (C)(1)(b) of this section, or a related member of such a vendor, customer, client, or patient.

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

- (2) Any location at which a trial, appeal, hearing, investigation, inquiry, review, court-martial, or similar administrative, judicial, or legislative matter or proceeding is being conducted, provided that the compensation is paid for services performed for, or on behalf of, the employer or that the employee's presence at the location directly or indirectly benefits the employer;
  - (3) Any other location, if the Tax Administrator determines that the employer directed the employee to perform the services at the other location in lieu of a location described in division (C)(1) or (C)(2) of this section solely in order to avoid or reduce the employer's municipal income tax liability. If a Tax Administrator makes such a determination, the employer may dispute the determination by establishing, by a preponderance of the evidence, that the Tax Administrator's determination was unreasonable.
- (D) For the purposes of division (A)(3) of this section, **and except as provided in division (I) of this section,** receipts from sales and rentals made and services performed shall be situated to a municipal corporation as follows:
- (1) Gross receipts from the sale of tangible personal property shall be issued to the municipal corporation only if, regardless of where title passes, the property meets either of the following criteria:
    - (a) The property is shipped to or delivered within the village from a stock of goods located within the village.
    - (b) The property is delivered within the village from a location outside the village, provided the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the village and the sales result from such solicitation or promotion.
  - (2) Gross receipts from the sale of services shall be situated to the municipal corporation.
  - (3) To the extent included in income, gross receipts from the sale of real property located in the municipal corporation shall be situated to the municipal corporation.
  - (4) To the extent included in income, gross receipts from rents and royalties from real property located in the municipal corporation shall be situated to the municipal corporation.

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

- (5) Gross receipts from rents and royalties from tangible personal property shall be situated to the municipal corporation based upon the extent to which the tangible personal property is used in the municipal corporation.
- (E) The net profit received by an individual taxpayer from the rental of real estate owned directly by the individual or by a disregarded entity owned by the individual shall be subject to tax only by the municipal corporation in which the property generating the net profit is located and the municipal corporation in which the individual taxpayer that receives the net profit resides.
- A municipal corporation shall allow such taxpayers to elect to use separate accounting for the purpose of calculating net profit situated under this division to the municipal corporation in which the property is located.
- (F) (1) Except as provided in division (F)(2) of this section, commissions received by a real estate agent or broker relating to the sale, purchase, or lease of real estate shall be situated to the municipal corporation in which the real estate is located. Net profit reported by the real estate agent or broker shall be allocated to a municipal corporation based upon the ratio of the commissions the agent or broker received from the sale, purchase, or lease of real estate located in the municipal corporation to the commissions received from the sale, purchase, or lease of real estate everywhere in the taxable year.
- (2) An individual who is a resident of a municipal corporation that imposes a municipal income tax shall report the individual's net profit from all real estate activity on the individual's annual tax return for that municipal corporation. The individual may claim a credit for taxes the individual paid on such net profit to another municipal corporation to the extent that such credit is allowed under § 37.081.
- (G) If, in computing a taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee, and if the employee is not required to include in the employee's income any such amount or a portion thereof because it is exempted from taxation under § 37.03(C)(13)(I), by a municipal corporation to which the taxpayer has apportioned a portion of its net profit, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to that municipal corporation. In no case shall a taxpayer be required to add to its net profit that was apportioned to that municipal corporation any amount other than the amount upon which the employee

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

would be required to pay tax were the amount related to the stock option not exempted from taxation.

This division applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to a municipal corporation under this section.

- (H) When calculating the ratios described in division (A) of this section for the purposes of that division or division (B) of this section, the owner of a disregarded entity shall include in the owner's ratios the property, payroll, and gross receipts of such disregarded entity.

**(I) (1) As used in this division:**

**(a) "Qualifying remote employee or owner" means an individual who is an employee of a taxpayer or who is a partner or member holding an ownership interest in a taxpayer that is treated as a partnership for federal income tax purposes, provided that the individual meets both of the following criteria:**

**(i) The taxpayer has assigned the individual to a qualifying reporting location.**

**(ii) The individual is permitted or required to perform services for the taxpayer at a qualifying remote work location.**

**(b) "Qualifying remote work location" means a permanent or temporary location at which an employee or owner chooses or is required to perform services for the taxpayer, other than a reporting location of the taxpayer or any other location owned or controlled by a customer or client of the taxpayer. "Qualifying remote work location" may include the residence of an employee or owner and may be located outside of a municipal corporation that imposes an income tax in accordance with this chapter. An employee or owner may have more than one qualifying remote work location during a taxable year.**

**(c) "Reporting location" means either of the following:**

**(i) A permanent or temporary place of doing business, such as an office, warehouse, storefront, construction site, or**

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

similar location, that is owned or controlled directly or indirectly by the taxpayer;

(ii) Any location in this state owned or controlled by a customer or client of the taxpayer, provided that the taxpayer is required to withhold taxes under Section 37.051 of this Chapter, on qualifying wages paid to an employee for the performance of personal services at that location.

(d) "Qualifying reporting location" means one of the following:

(i) The reporting location in this state at which an employee or owner performs services for the taxpayer on a regular or periodic basis during the taxable year;

(ii) If no reporting location exists in this state for an employee or owner under division (I)(1)(d)(i) of this section, the reporting location in this state at which the employee's or owner's supervisor regularly or periodically reports during the taxable year;

(iii) If no reporting location exists in this state for an employee or owner under division (I)(1)(d)(i) or (ii) of this section, the location that the taxpayer otherwise assigns as the employee's or owner's qualifying reporting location, provided the assignment is made in good faith and is recorded and maintained in the taxpayer's business records. A taxpayer may change the qualifying reporting location designated for an employee or owner under this division at any time.

(2) For tax years ending on or after December 31, 2023, a taxpayer may elect to apply the provisions of this division to the apportionment of its net profit from a business or profession. For taxpayers that make this election, the provisions of division (B) of this section apply to such apportionment except as otherwise provided in this division.

A taxpayer shall make the election allowed under this division in writing on or with the taxpayer's net profit return or, if applicable, a timely filed amended net profit return or a timely filed appeal of an assessment. The election applies to the taxable year for which that

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

return or appeal is filed and for all subsequent taxable years, until the taxpayer revokes the election.

The taxpayer shall make the initial election with the tax administrator of each municipal corporation with which, after applying the apportionment provisions authorized in this division, the taxpayer is required to file a net profit tax return for that taxable year. A taxpayer shall not be required to notify the tax administrator of a municipal corporation in which a qualifying remote employee's or owner's qualifying remote work location is located, unless the taxpayer is otherwise required to file a net profit return with that municipal corporation due to business operations that are unrelated to the employee's or owner's activity at the qualifying remote work location.

After the taxpayer makes the initial election, the election applies to every municipal corporation in which the taxpayer conducts business. The taxpayer shall not be required to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in such municipal corporation.

Nothing in this division prohibits a taxpayer from making a new election under this division after properly revoking a prior election.

(3) For the purpose of calculating the ratios described in division (B)(1) of this section, all of the following apply to a taxpayer that has made the election described in division (I)(2):

(a) For the purpose of division (B)(1)(a) of this section, the average original cost of any tangible personal property used by a qualifying remote employee or owner at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(b) For the purpose of division (B)(1)(b) of this section, any wages, salaries, and other compensation paid during the taxable period to a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.

(c) For the purpose of division (B)(1)(c) of this section, and notwithstanding division (B)(4) of this section, any gross receipts



## RECORD OF ORDINANCES

Ordinance No. 2023 - 77

Passed NOVEMBER 1, 2023

**of the business or profession from services performed during the taxable period by a qualifying remote employee or owner for services performed at that individual's qualifying remote work location shall be situated to that individual's qualifying reporting location.**

- (4) Nothing in this division prevents a taxpayer from requesting, or a tax administrator from requiring, that the taxpayer use, with respect to all or a portion of the income of the taxpayer, an alternative apportionment method as described in division (B)(2) of this section. However, a tax administrator shall not require an alternative apportionment method in such a manner that it would require a taxpayer to file a net profit return with a municipal corporation solely because a qualifying remote employee's or owner's qualifying remote work location is located in that municipal corporation.**
- (5) Except as otherwise provided in this division, nothing in this division is intended to affect the withholding of taxes on qualifying wages pursuant to Section 37.051 of this Chapter.**

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**§ 37.094 EXTENSION OF TIME TO FILE.**

- (A) Any taxpayer that has duly requested an automatic six-month extension for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the 15th day of the tenth month after the last day of the taxable year to which the return relates. **For tax years ending on or after January 1, 2023, the extended due date of the municipality's income tax return for a taxpayer that is not an individual shall be the 15th day of the eleventh month after the last day of the taxable year to which the return relates.**
- (B) Any taxpayer that qualifies for an automatic federal extension for a period other than six-months for filing the taxpayer's federal income tax return shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as that of the extended federal income tax return.
- (C) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal

## RECORD OF ORDINANCES

Ordinance No. 2023 - 77Passed NOVEMBER 1, 2023

income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.

- (D) An extension of time to file under this chapter is not an extension of the time to pay any tax due unless the Tax Administrator grants an extension of that date.
- (E) A copy of the federal extension request shall be included with the filing of the municipal's income tax return.
- (F) A taxpayer that has not requested or received a six-month extension for filing the taxpayer's federal income tax return may submit a written request that the Tax Administrator grant the taxpayer a six-month extension of the date for filing the taxpayer's municipal income tax return. If the request is received by the Tax Administrator on or before the date the municipal income tax return is due, the Tax Administrator shall grant the taxpayer's requested extension.
- (G) If the State Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (G) of R.C. § 5747.08, a taxpayer shall automatically receive an extension for the filing of a municipal income tax return. The extended due date of the municipal income tax return shall be the same as the extended due date of the state income tax return.

**(H) If a taxpayer receives an extension for the filing of a municipal income tax return under division (A)(B), (C), (F) or (G) of this section, the tax administrator shall not make any inquiry or send any notice to the taxpayer with regard to the return on or before the date the taxpayer files the return or on or before the extended due date to file the return, whichever occurs first.**

**If a tax administrator violates division (H) of this section, the municipal corporation shall reimburse the taxpayer for any reasonable costs incurred to respond to such inquiry or notice, up to \$150.**

**Division (H) of this section does not apply to an extension received under division (A) of this section if the tax administrator has actual knowledge that the taxpayer failed to file for a federal extension as required to receive the extension under division (A) of this section or failed to file for an extension under division (C) or (F) of this section.**

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§ 37.10 PENALTY, INTEREST, FEES, AND CHARGES.

RECORD OF ORDINANCES

Ordinance No. 2023 - 77

Passed NOVEMBER 1, 2023

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- (C) The municipality shall impose on a taxpayer, employer, any agent of the employer, and any other payer, and will attempt to collect, the interest amounts and penalties prescribed in this section when the taxpayer, employer, any agent of the employer, or any other payer for any reason fails, in whole or in part, to make to the municipality timely and full payment or remittance of income tax, estimated income tax, or withholding tax or to file timely with the municipality any return required to be filed.
- (1) Interest shall be imposed at the rate defined as "interest rate as described in division (A) of this section", per annum, on all unpaid income tax, unpaid estimated income tax, and unpaid withholding tax. This imposition of interest shall be assessed per month, or fraction of a month.
  - (2) With respect to unpaid income tax and unpaid estimated income tax, a penalty equal to 15% of the amount not timely paid shall be imposed.
  - (3) With respect to any unpaid withholding tax, a penalty not exceeding 50% of the amount not timely paid shall be imposed.
  - (4) 

**(a) For tax years ending on or before December 31, 2022, w**With respect to returns other than estimated income tax returns, the municipality shall impose a monthly penalty of \$25 for each failure to timely file each return, regardless of the liability shown thereon for each month, or any fraction thereof, during which the return remains unfiled regardless of the liability shown thereon. The penalty shall not exceed a total of \$150 in assessed penalty for each failure to timely file a return.

**(b) For tax years ending on or after January 1, 2023, with respect to returns other than estimated income tax returns, the municipality may impose a penalty not exceeding \$25 for each failure to timely file each return, regardless of the liability shown thereon, except that the municipality shall abate or refund the penalty assessed on a taxpayer's first failure to timely file a return after the taxpayer files that return.**

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SECTION 2: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this


RECORD OF ORDINANCES

Ordinance No. 2023 - 77

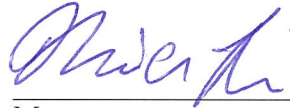
Passed NOVEMBER 1, 2023

Council and any deliberations of this Council and any of its committees that resulted in this formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION 3: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the residents of the Village of Mogadore and for the purpose of immediately amending the aforementioned Sections to come into compliance with recent updates in Ohio law, and, provided this Ordinance receives the affirmative vote of at least five (5) members elected or appointed to this Council, it shall take effect and be in force upon its passage by Council and approval by the Mayor, otherwise it shall take effect and be in force at the earliest period allowed by law.

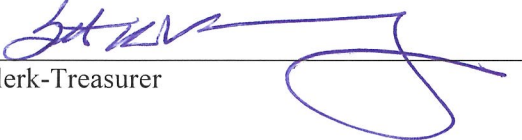
  
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President of Council

11-1-23  
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Date

  
\_\_\_\_\_  
Mayor

11-1-23  
\_\_\_\_\_  
Date

Attest:

  
\_\_\_\_\_  
Clerk-Treasurer